



### Utility Relocation

#### **Determine Buy America Applicability**

Buy America applies to a utility relocation if 1-4 are true:

1. National Environmental Policy Act (NEPA) is followed for the construction project's environmental document.
2. Federal Aid is used in a contract or project ID related to the construction project.
  - Design Project ID
  - Construction Project ID
  - Utility Project ID
  - Real Estate Project ID
  - Railroad Project ID
3. Utility relocation is eligible for reimbursement by one of the following:
  - Wis. Statutes 84.09 for STH projects – acquisition of lands rights and interests
  - Wis. Statutes 61.34(3)(3m), 62.22, 82.14(1), 83.08(1) for LPA projects – acquisition of lands rights and interests
  - Wis. Statutes 84.295(4m) – municipal utility relocation for designated freeway
  - Wis. Statutes 84.06(4) – special contract
  - Trans 220.06(1) – second move
4. All utility work is a part of the contract between WisDOT and the utility must comply, regardless of eligibility for reimbursement.

Materials:

- Reusing Materials
  - If reused materials are not removed from the project limits, they are Buy America compliant.
  - Materials that are reused should not be on the Buy America certification.
  - Materials that are reused do not count toward the Minimal Use Threshold.
- Temporary Materials
  - Buy America does not apply to temporary materials.
  - Materials that are not permanently installed and are removed prior to the completion of the relocation.
  - Temporary materials should not be on the Buy America certification.
  - Temporary materials do not count towards the Minimal Use Threshold.



## Job Aid – Interim Guidance – Buy America

### Determine Which Version of Buy America Rules Apply

On December 22, 2015, the United States Court for the District of Columbia granted a summary judgment that eliminates the 90-Percent Threshold and the Miscellaneous Products Exemption as set forth in a 2012 Memorandum by the FHWA.

Determine the date the utility contract was signed by WisDOT:

- Use the circled date in the signature blocks for each type of utility contract below to determine when the utility contract was signed:

Utility contract was signed by WisDOT on or before January 15, 2016:

- Utility contract is not required to comply with summary judgment.
- The 90-Percent Threshold and the Miscellaneous Products Exemption apply.

Utility contract was signed by WisDOT after January 15, 2016:

- Utility contract is required to comply with summary judgment.
- The 90-Percent Threshold and the Miscellaneous Products Exemption do not apply.

#### Audit or Lump Sum Agreement for Payment for Lands or Interest in Lands Acquired from Public Utility (DT1541 and DT1542)

WISCONSIN DEPARTMENT OF TRANSPORTATION	
(Contract Manager)	(Date)
(Print Name)	(Signature) (Date)
(Title)	(Signature) (Date)
(Division Administrator)	(Signature) (Date)
(Date)	(Title)

#### Agreement for Payment-For Relocation or Replacement of Municipal Utility Facilities Located on Public Held Land Required by Freeway Construction (DT1575)

WISCONSIN DEPARTMENT OF TRANSPORTATION		MUNICIPAL UTILITY	
(Contract Manager)	(Date)	(Company Name)	(Date)
(Print Name)	(Signature) (Date)	(Authorized Signature)	(Date)
(Title)	(Signature) (Date)	(Print Name)	(Date)
(Office of the Governor)	(Signature) (Date)	(Authorized Signature)	(Date)
(Print Name)	(Signature) (Date)	(Print Name)	(Date)
		(Authorized Signature)	(Date)
		(Print Name)	(Date)

#### Agreement for Payment-For Relocation or Replacement of Utility Facilities (DT2192)

WISCONSIN DEPARTMENT OF TRANSPORTATION		UTILITY COMPANY	
(Contract Manager)	(Date)	(Company Name)	(Date)
(Print Name)	(Signature) (Date)	(Authorized Signature)	(Date)
(Title)	(Signature) (Date)	(Print Name)	(Date)
(Office of the Governor)	(Signature) (Date)	(Authorized Signature)	(Date)
(Print Name)	(Signature) (Date)	(Print Name)	(Date)
		(Authorized Signature)	(Date)
		(Print Name)	(Date)

#### Audit or Lump Sum Agreement for Payment to Public Utility Based on Prior Land Rights (DT2193 and DT2194)

WISCONSIN DEPARTMENT OF TRANSPORTATION		UTILITY COMPANY	
(Division Administrator)	(Date)	(Company Name)	(Date)
(Print Name)	(Signature) (Date)	(Authorized Signature)	(Date)
		(Print Name)	(Date)
		(Authorized Signature)	(Date)
		(Print Name)	(Date)



### Determine Minimal Use Threshold

Minimal use provision:

- The minimal use provision allows the use of steel or iron that is not compliant with Buy America.
- The total cost of the non-compliant steel and iron must be less than \$2500.00 or 0.1% of the total contract cost, whichever is greater.
- Total contract cost is the dollar amount of the contract between WisDOT and the utility.
- The minimal use threshold will be \$2500.00, unless the contract amount is greater than \$2.5 million.
- For purposes of the minimal use threshold, the cost is the dollar amount for the steel and iron products as they are delivered to the project.

### Certification

#### Certification Submittal

- Every invoice for any utility contract with a revision date of 7/2013 or later must include a *Utility's Certificate of Compliance For Steel and Iron Items (DT2249)*.
- ~~A Utility's Certificate of Compliance For Steel and Iron Items (DT2249A) for additional manufacturer/supplier information may be required for certifications sent to utilities prior to February 2018.~~
- For progressive invoices, the certification will only include the items that are associated with that invoice.

#### Step Certification

- A step certification is a process under which each handler (supplier, fabricator, manufacturer, processor, etc.) of the iron and steel products certifies that their step in the process was domestically performed.
- A utility unit representative can request any or all of these certifications.

### DT2249 Guidance

#### Domestic Material

- The products listed will be affected by the contract signature date.
- All six columns should be completed. \*
- Perform cursory review to ensure that the necessary products have been included. For example:
  - If the relocation was for a steel natural gas main and there is no gas main listed, the utility would most likely be required to submit an updated certification.
  - Manufacturer/Supplier should be the company that supplied the final product to the utility company. The utility or the Manufacturer/Supplier should have all of the step certification(s) available if requested by WisDOT.
  - Evaluate if the quantity seems reasonable for the relocation. For example:
    - If the relocation was for 10,000 feet of steel natural gas main and only 500 feet of steel natural gas main is on the certification, the utility would most likely be required to submit an updated certification.
  - Verify that the correct unit has been entered for each product. The unit should be the same as on the approved estimate. If the unit is not the same, the utility would be required to submit an updated certification.

#### Foreign Material

- All four columns should be completed. \*
- Perform cursory review to ensure that the necessary products have been included. For example:
  - If the relocation was for a wood transmission tower and there are no steel or iron nuts and bolts listed, the utility would most likely be required to submit an updated certification.
  - ~~Manufacturer/Supplier should be the company that supplied the final product to the utility company. The utility or the Manufacturer/Supplier should have all of the step certification(s) available if requested by WisDOT.~~
  - Evaluate if the quantity seems reasonable for the relocations. For example:



## Job Aid – Interim Guidance – Buy America

- If the relocation was for 100 wood transmission towers and only 1 steel or iron nut and bolt is on the certification, the utility would most likely be required to submit an updated certification.
- Verify that the correct unit has been entered for each product. The unit should be the same as on the approved estimate. If the unit is not the same, the utility would be required to submit an updated certification.

*\*When the utility does not have the requirement information to complete any of these columns, please contact the BTS Utility Unit @ [dotdtsdcutilitycoordination@dot.wi.gov](mailto:dotdtsdcutilitycoordination@dot.wi.gov).*

### Resolving Non-Compliance

First and foremost, attempt to get the utility in compliance by performing an in-depth review:

- Review the certification and list of materials to ensure that the utility has applied the Minimal Use Threshold correctly. Coordinate all of the potential revisions with the utility.
- Review the certification to ensure that only steel or iron items have been listed. Coordinate all of the potential revisions with the utility.
- Coordinate with the utility to replace non-compliant items with compliant items in order to get to a point where the cost of the remaining non-compliant items are below the Minimal Use Threshold.

If attempts to correct non-compliance fails, contact the BTS Utility Unit as coordination with FHWA may be required.

### Buy America ~~Buy America~~ Resources

**Q# 1.** Where can I find FHWA's Buy America policies?

**A# 1.** The FHWA Buy America statutory provisions are in 23 U.S.C.313 and the regulatory provisions are in 23 CFR 635.410.

For other policy and guidance links, see the Construction Program Guide. These resources and other guidance related to Buy America can be located using the following link: <https://www.fhwa.dot.gov/construction/cqit/buyam.cfm>

Questions regarding this job aid can be directed to: [connie.bruns@dot.wi.gov](mailto:connie.bruns@dot.wi.gov)